

78B-5-101. Right to jury trial.

In actions for the recovery of specific real or personal property, with or without damages, or for money claimed due upon contract or as damages for breach of contract, or for injuries, an issue of fact may be tried by a jury, unless a jury trial is waived or a reference is ordered.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-102. Jury to decide questions of fact.

All questions of fact, where the trial is by jury, other than those mentioned in Section 78B-5-103, are to be decided by the jury, and all evidence is to be addressed to them, except when otherwise provided.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-103. Court to decide questions of law.

All questions of law, including the admissibility of evidence, the facts preliminary to admission, the construction of statutes and other writings, the application of the rules of evidence, and all discussions of law are to be addressed to and decided by the court. Whenever the knowledge of the court is by law made evidence of a fact, the court shall explain the knowledge to the jury, who are to accept it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-201. Definitions -- Judgment recorded in Registry of Judgments.

(1) For purposes of this part, "Registry of Judgments" means the index where a judgment is filed and searchable by the name of the judgment debtor through electronic means or by tangible document.

(2) On or after July 1, 1997, a judgment entered in a district court does not create a lien upon or affect the title to real property unless the judgment is filed in the Registry of Judgments of the office of the clerk of the district court of the county in which the property is located.

(3) (a) On or after July 1, 2002, except as provided in Subsection (3)(b), a judgment entered in a district court does not create a lien upon or affect the title to real property unless the judgment or an abstract of judgment is recorded in the office of the county recorder in which the real property of the judgment debtor is located.

(b) State agencies are exempt from the recording requirement of Subsection (3)(a).

(4) In addition to the requirements of Subsections (2) and (3)(a), any judgment that is filed in the Registry of Judgments on or after September 1, 1998, or any judgment or abstract of judgment that is recorded in the office of a county recorder after July 1, 2002, shall include:

(a) the information identifying the judgment debtor as required under Subsection (4)(b) on the judgment or abstract of judgment; or

(b) a copy of the separate information statement of the judgment creditor that

contains:

- (i) the correct name and last-known address of each judgment debtor and the address at which each judgment debtor received service of process;
- (ii) the name and address of the judgment creditor;
- (iii) the amount of the judgment as filed in the Registry of Judgments;
- (iv) if known, the judgment debtor's Social Security number, date of birth, and driver's license number if a natural person; and
- (v) whether or not a stay of enforcement has been ordered by the court and the date the stay expires.

(5) For the information required in Subsection (4), the judgment creditor shall:

(a) provide the information on the separate information statement if known or available to the judgment creditor from its records, its attorney's records, or the court records in the action in which the judgment was entered; or

(b) state on the separate information statement that the information is unknown or unavailable.

(6) (a) Any judgment that requires payment of money and is entered in a district court on or after September 1, 1998, or any judgment or abstract of judgment recorded in the office of a county recorder after July 1, 2002, that does not include the debtor identifying information as required in Subsection (4) is not a lien until a separate information statement of the judgment creditor is recorded in the office of a county recorder in compliance with Subsections (4) and (5).

(b) The separate information statement of the judgment creditor referred to in Subsection (6)(a) shall include:

- (i) the name of any judgment creditor, debtor, assignor, or assignee;
- (ii) the date on which the judgment was recorded in the office of the county recorder as described in Subsection (4); and
- (iii) the county recorder's entry number and book and page of the recorded judgment.

(7) A judgment that requires payment of money recorded on or after September 1, 1998, but prior to July 1, 2002, has as its priority the date of entry, except as to parties with actual or constructive knowledge of the judgment.

(8) A judgment or notice of judgment wrongfully filed against real property is subject to Title 38, Chapter 9, Wrongful Lien Act.

(9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the office of a county recorder, a person shall, in the office of the county recorder of each county in which an instrument creating the lien is recorded, record a document releasing, assigning, renewing, or extending the lien.

(b) The document described in Subsection (9)(a) shall include:

- (i) the date of the release, assignment, renewal, or extension;
- (ii) the name of any judgment creditor, debtor, assignor, or assignee; and
- (iii) for the county in which the document is recorded in accordance with Subsection (9)(a):

(A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and

(B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien.

Amended by Chapter 114, 2014 General Session
Amended by Chapter 151, 2014 General Session

78B-5-202. Duration of judgment -- Judgment as a lien upon real property -- Abstract of judgment -- Small claims judgment not a lien -- Appeal of judgment -- Child support orders.

(1) Judgments shall continue for eight years from the date of entry in a court unless previously satisfied or unless enforcement of the judgment is stayed in accordance with law.

(2) Prior to July 1, 1997, except as limited by Subsections (4) and (5), the entry of judgment by a district court creates a lien upon the real property of the judgment debtor, not exempt from execution, owned or acquired during the existence of the judgment, located in the county in which the judgment is entered.

(3) An abstract of judgment issued by the court in which the judgment is entered may be filed in any court of this state and shall have the same force and effect as a judgment entered in that court.

(4) Prior to July 1, 1997, and after May 15, 1998, a judgment entered in the small claims division of any court may not qualify as a lien upon real property unless abstracted to the civil division of the district court and recorded in accordance with Subsection (3).

(5) (a) If any judgment is appealed, upon deposit with the court where the notice of appeal is filed of cash or other security in a form and amount considered sufficient by the court that rendered the judgment to secure the full amount of the judgment, together with ongoing interest and any other anticipated damages or costs, including attorney fees and costs on appeal, the lien created by the judgment shall be terminated as provided in Subsection (5)(b).

(b) Upon the deposit of sufficient security as provided in Subsection (5)(a), the court shall enter an order terminating the lien created by the judgment and granting the judgment creditor a perfected lien in the deposited security as of the date of the original judgment.

(6) (a) A child support order or a sum certain judgment for past due support may be enforced:

(i) within four years after the date the youngest child reaches majority; or
(ii) eight years from the date of entry of the sum certain judgment entered by a tribunal.

(b) The longer period of duration shall apply in every order.

(c) A sum certain judgment may be renewed to extend the duration.

(7) (a) After July 1, 2002, a judgment entered by a district court or a justice court in the state becomes a lien upon real property if:

(i) the judgment or an abstract of the judgment containing the information identifying the judgment debtor as described in Subsection 78B-5-201(4)(b) is recorded in the office of the county recorder; or

(ii) the judgment or an abstract of the judgment and a separate information statement of the judgment creditor as described in Subsection 78B-5-201(5) is recorded in the office of the county recorder.

(b) The judgment shall run from the date of entry by the district court or justice court.

(c) The real property subject to the lien includes all the real property of the judgment debtor:

(i) in the county in which the recording under Subsection (7)(a)(i) or (ii) occurs; and

(ii) owned or acquired at any time by the judgment debtor during the time the judgment is effective.

(d) State agencies are exempt from the recording requirement of Subsection (7)(a).

(8) (a) A judgment referred to in Subsection (7) shall be entered under the name of the judgment debtor in the judgment index in the office of the county recorder as required in Section 17-21-6.

(b) A judgment containing a legal description shall also be abstracted in the appropriate tract index in the office of the county recorder.

(9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the office of a county recorder, a person shall, in the office of the county recorder of each county in which an instrument creating the lien is recorded, record a document releasing, assigning, renewing, or extending the lien.

(b) The document described in Subsection (9)(a) shall include:

(i) the date of the release, assignment, renewal, or extension;

(ii) the name of any judgment creditor, debtor, assignor, or assignee; and

(iii) for the county in which the document is recorded in accordance with Subsection (9)(a):

(A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and

(B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien.

Amended by Chapter 151, 2014 General Session

78B-5-203. Judgment against party dying after verdict or decision.

If a party dies after a verdict or decision upon any issue of fact, and before judgment, the judgment is not a lien on the real property of the deceased party, but is payable in the course of the administration of the party's estate.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-204. Judgment against sheriff -- When conclusive against sureties on indemnity bond.

If an action is brought against a sheriff for an act done by virtue of his office and he gives written notice to the sureties on any bond of indemnity received by him, the judgment recovered is conclusive evidence of his right to recover against such sureties. The court may, on motion, and upon five days notice, order judgment to be entered against them for the amount recovered, including costs.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-205. Judgment by confession authorized.

A judgment by confession may be entered without action, either for money due or to become due or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by law. The judgment may be entered in any court having jurisdiction for like amounts.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-206. Mileage allowance for judgment debtor required to appear.

A judgment debtor legally required to appear before a district court or a master to answer concerning the debtor's property is entitled, on a sufficient showing of need, to mileage of 15 cents per mile for each mile actually and necessarily traveled in going only, to be paid by the judgment creditor at whose instance the judgment debtor was required to appear. The judgment creditor is not required to make any payment for such mileage until the judgment debtor has actually appeared before the court or master.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-301. Title.

This part is known as the "Utah Foreign Judgment Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-302. Definition -- Filing and status of foreign judgments.

(1) As used in this part, "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court whose acts are entitled to full faith and credit in this state.

(2) A copy of a foreign judgment authenticated in accordance with an appropriate act of Congress or an appropriate act of Utah may be filed with the clerk of any district court in Utah. The clerk of the district court shall treat the foreign judgment in all respects as a judgment of a district court of Utah.

(3) A foreign judgment filed under this part has the same effect and is subject to the same procedures, defenses, enforcement, satisfaction, and proceedings for reopening, vacating, setting aside, or staying as a judgment of a district court of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-303. Notice of filing.

(1) The judgment creditor or attorney for the creditor, at the time of filing a foreign judgment, shall file an affidavit with the clerk of the district court stating the last known post-office address of the judgment debtor and the judgment creditor.

(2) Upon the filing of a foreign judgment and affidavit, the clerk of the district

court shall notify the judgment debtor that the judgment has been filed. Notice shall be sent to the address stated in the affidavit. The clerk shall record the date the notice is mailed in the register of actions. The notice shall include the name and post-office address of the judgment creditor and the name and address of the judgment creditor's attorney, if any.

(3) No execution or other process for the enforcement of a foreign judgment filed under this part may issue until 30 days after the judgment is filed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-304. Stay.

(1) If an appeal from a foreign judgment is pending, the time for appeal has not expired, or a stay of execution has been granted, the court, upon proof that the judgment debtor has furnished security for satisfaction of the judgment in the state in which the judgment was rendered shall stay enforcement of the judgment until the appeal is concluded, the time for appeal expires, or until the stay of execution expires or is vacated.

(2) If the foreign judgment debtor, upon motion, shows the district court any ground upon which enforcement of a judgment of a district court of this state would be stayed, the court shall stay enforcement of the foreign judgment upon the posting of security in the kind and amount required to stay enforcement of a domestic judgment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-305. Lien.

(1) A foreign judgment entered in a district court under this part becomes a lien as provided in Section 78B-5-202 if:

- (a) a stay of execution has not been granted;
- (b) the requirements of this chapter are satisfied; and
- (c) the judgment is recorded in the office of the county recorder where the property of the judgment debtor is located, as provided in Section 78B-5-202.

(2) The lien becomes effective at the time and date of recording and expires eight years after date of entry by the court in the foreign jurisdiction unless renewed in Utah as required by Utah law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-306. Optional procedure.

This part may not be construed to impair a judgment creditor's right to bring an action in this state to enforce the creditor's judgment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-307. Uniformity of interpretation.

This part shall be construed to effectuate the general purpose to make uniform the law of those states which enact it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-320. Grounds for nonrecognition of libel judgments.

A judgment obtained in a foreign jurisdiction may be considered nonrecognizable and unenforceable by the courts of this state if:

- (1) the judgment was obtained in a jurisdiction outside the United States;
- (2) the judgment resulted in a libel judgment for damages; and
- (3) the court sitting in this state before which the matter is brought determines that the libel law applied in the foreign court's adjudication process did not provide at least as much protection for freedom of speech and press as would be provided by the United States Constitution and the Utah Constitution.

Enacted by Chapter 117, 2010 General Session

78B-5-321. Foreign libel judgment.

For the purposes of applying Title 78B, Chapter 5, Part 3, Utah Foreign Judgment Act, to this part, the courts of this state may not make the determination in Section 78B-5-320 unless the person attempting to enforce the judgment submits to personal jurisdiction and the person against whom the judgment is being enforced:

- (1) is a resident of this state;
- (2) is a person or entity amenable to the jurisdiction of this state;
- (3) has assets in this state; or
- (4) may be required to take action in this state to comply with the judgment.

Enacted by Chapter 117, 2010 General Session

78B-5-322. Application.

This part applies to all foreign libel judgments filed for enforcement or recognition in this state.

Enacted by Chapter 117, 2010 General Session

78B-5-401. Title.

This part is known as the "Uniform Foreign-Money Claims Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-402. Definitions.

As used in this part:

- (1) "Action" means a judicial proceeding or arbitration in which a money payment may be awarded or enforced in respect of a foreign-money claim.
- (2) "Conversion date" means the banking day next before the date on which money is, in accordance with this part:
 - (a) paid to a judgment creditor;
 - (b) paid to the designated official enforcing a judgment on behalf of the

judgment creditor; or

(c) used to effect a recoupment or set-off of claims in different money in an action.

(3) "Distribution proceeding" means a judicial or nonjudicial proceeding for an accounting, an assignment for the benefit of creditors, a foreclosure, for the liquidation or rehabilitation of a corporation or other entity, for the distribution of an estate, trust, or other fund in or against which a foreign-money claim is asserted.

(4) "Foreign money" means money other than money of the United States of America.

(5) "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.

(6) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

(7) "Money of the claim" means the money determined as proper by Section 78B-5-405.

(8) "Party" means an individual, a corporation, government or governmental subdivision or agency, business trust, partnership or association of two or more persons having a joint or common interest or any other legal or commercial entity asserting or defending against a foreign-money claim.

(9) "Rate of exchange" means the rate at which the money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by the party obliged to pay or to state a rate of conversion. If separate exchange rates apply to different kinds of transactions or events, the term means the rate applicable to the particular transaction or event giving rise to the foreign-money claim.

(10) (a) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for settlement by immediate payment, by charge to an account, or by an agreed delayed settlement not exceeding two days.

(b) "Bank-offered spot rate" means the rate of exchange at which a bank will issue its draft in the foreign money or will cause credit to become available in the foreign money on a next-day basis.

(11) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the United States Virgin Islands.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-403. Scope.

(1) This part applies only to a foreign-money claim in an action or distribution proceeding.

(2) This part applies to foreign-money issues notwithstanding the law applicable under the conflict of laws rules of this state to other issues in the action or distribution proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-404. Variation by agreement.

(1) The effect of provisions of this part may be varied by agreement of the parties made at any time before or after commencement of an action, distribution proceeding, or the entry of judgment.

(2) The parties may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may use different money for different aspects of the transaction. Stating the price in a foreign money or for a particular transaction does not require, of itself, the use of that money for other aspects of the transaction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-405. Determining the money of the claim.

(1) Except as provided by Subsection (2), the proper money of the claim is, as in each case may be appropriate, the money:

(a) regularly used between the parties as a matter of usage or course of dealing;

(b) used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(c) in which the loss was ultimately felt or will be incurred by a party.

(2) The money in which the parties have contracted that a payment be made is the proper money of the claim for that payment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-406. Determining the amount of the money of certain contract claims.

(1) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(2) If an amount contracted to be paid in a foreign money is to be measured by a different money at the exchange rate prevailing on a date prior to default, that exchange rate applies only for payments made a reasonable time after default, not to exceed 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(3) (a) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money shall, when received by the creditor, equal a specified amount of the foreign money of the country of the creditor.

(b) If because of unexcused delay in payment of a judgment or award the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator, as the case may be, has jurisdiction to and may amend the judgment or award accordingly.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-407. Asserting and defending a foreign-money claim.

(1) A claimant may assert a claim in a specified foreign money. If a foreign money is not asserted, the claimant makes a claim for a judgment in United States dollars.

(2) An opposing party may allege and prove the claim is in whole or in part for a different money than that asserted by the claimant.

(3) Any party may assert a defense, set-off, recoupment, or counterclaim in any money without regard to the money of other claims.

(4) The determination of the proper money of the claim is a question of law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-408. Judgments and awards on foreign-money claims -- Time of money conversion -- Form of judgment.

(1) Except as provided in Subsection (3), a judgment or arbitration award on a foreign-money claim must be stated in an amount of the money of the claim.

(2) The judgment or award is payable in that foreign money or at the option of the debtor in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

(3) Assessed costs must be entered in United States dollars.

(4) Each payment in United States dollars must be accepted and credited on the judgment or award in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(5) Judgments or awards made in an action on both:

(a) a defense, set-off, recoupment, or counterclaim; and

(b) the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and must specify the rates of exchange used.

(6) A judgment substantially in the following form complies with Subsection (1):

IT IS ADJUDGED AND ORDERED that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate - see Section 78B-5-410) percent a year or, at the option of the judgment debtor, the number of United States dollars as will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.

(7) If a contract claim is of the type covered by Subsection 78B-5-406(1) or (2), the judgment or award shall be entered for the amount of the money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars as will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(8) A judgment shall be filed in the judgment docket and indexed in foreign money in the same manner, and shall have the same effect as a lien as other judgments. It may be discharged by payment.

(9) A person shall record a judgment lien, or assignment, release, renewal, or

extension of a judgment lien, in the county recorder's office in accordance with the following provisions, as applicable:

- (a) Sections 17-21-10, 78B-5-201, and 78B-5-202; and
- (b) Title 38, Chapter 9, Wrongful Lien Act.

Amended by Chapter 114, 2014 General Session

78B-5-409. Conversions of foreign money in a distribution proceeding.

The rate of exchange prevailing at or near the closing of business on the day the proceeding is initiated shall govern all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding must assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-410. Prejudgment and judgment interest.

(1) With respect to a foreign-money claim, recovery of prejudgment interest and the rate of interest to be applied in the action or distribution proceeding are matters of the substantive law governing the right to recovery under the conflict of laws rules of this state.

(2) Notwithstanding Subsection (1), an increase or decrease in the amount of prejudgment interest otherwise payable may be made in a foreign-money judgment to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

(3) A judgment on a foreign-money claim bears interest at the same rate applicable to other judgments of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-411. Enforcement of foreign judgments.

(1) Subject to Subsections (2) and (3), if an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment shall be entered as provided in Section 78B-5-408 whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars. A satisfaction or partial payment made upon the foreign judgment, on proof thereof, shall be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.

(2) Notwithstanding Subsection (1), a foreign judgment may be filed in the judgment docket in accordance with any statute of this state providing a procedure for its recognition and enforcement.

(3) A judgment entered on a foreign-money claim only in United States dollars in another state shall be enforced in this state in United States dollars only.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-412. Temporarily determining the United States dollar value of foreign-money claims for limited purposes.

(1) For the limited purpose of facilitating the enforcement of provisional remedies in an action:

- (a) the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process;
- (b) the amount of United States dollars at issue for assessing costs; or
- (c) the amount of United States dollars involved for a surety bond or other court-required undertaking shall be ascertained as provided in Subsections (2) and (3).

(2) The party seeking the process, costs, bond, or other undertaking shall compute the dollar amount of the foreign money claimed from a bank-offered spot rate of exchange prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

(3) The party seeking the process, costs, bond, or other undertaking shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used, how obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment was in the amount of United States dollars stated in the affidavit or certificate.

(4) Computations under this section are for the limited purposes of this section and do not affect computation of the United States dollar equivalent of the money of the judgment for payment purposes.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-413. Effect of currency revalorizations.

(1) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(2) If substitution under Subsection (1) occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall have jurisdiction to, and shall, amend the judgment or award by a like conversion of the former money.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-414. Supplementary general principles of law.

Unless displaced by particular provisions of this part, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake,

bankruptcy, or other validating or invalidating causes supplement its provisions.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-415. Uniformity of application and construction.

This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-416. Application.

This part applies to actions and distribution proceedings commenced after April 23, 1990.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-501. Title.

This part is known as the "Utah Exemptions Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-502. Definitions.

As used in this part:

(1) "Debt" means a legally enforceable monetary obligation or liability of an individual, whether arising out of contract, tort, or otherwise.

(2) "Dependent" means the spouse of an individual, and the grandchild or the natural or adoptive child of an individual who derives support primarily from that individual.

(3) "Exempt" means protected, and "exemption" means protection from subjection to a judicial process to collect an unsecured debt.

(4) "Judicial lien" means a lien on property obtained by judgment or other legal process instituted for the purpose of collecting an unsecured debt.

(5) "Levy" means the seizure of property pursuant to any legal process issued for the purpose of collecting an unsecured debt.

(6) "Lien" means a judicial, or statutory lien, in property securing payment of a debt or performance of an obligation.

(7) "Liquid assets" means deposits, securities, notes, drafts, unpaid earnings not otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables.

(8) "Security interest" means an interest in property created by contract to secure payment or performance of an obligation.

(9) "Statutory lien" means a lien arising by force of a statute, but does not include a security interest or a judicial lien.

(10) "Value" means fair market value of an individual's interest in property, exclusive of valid liens.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-503. Homestead exemption -- Definitions -- Excepted obligations -- Water rights and interests -- Conveyance -- Sale and disposition -- Property right for federal tax purposes.

(1) For purposes of this section:

(a) "Household" means a group of persons related by blood or marriage living together in the same dwelling as an economic unit, sharing furnishings, facilities, accommodations, and expenses.

(b) "Mobile home" is as defined in Section 57-16-3.

(c) "Primary personal residence" means a dwelling or mobile home, and the land surrounding it, not exceeding one acre, as is reasonably necessary for the use of the dwelling or mobile home, in which the individual and the individual's household reside.

(d) "Property" means:

(i) a primary personal residence;

(ii) real property; or

(iii) an equitable interest in real property awarded to a person in a divorce decree by a court.

(2) (a) An individual is entitled to a homestead exemption consisting of property in this state in an amount not exceeding:

(i) \$5,000 in value if the property consists in whole or in part of property which is not the primary personal residence of the individual; or

(ii) \$30,000 in value if the property claimed is the primary personal residence of the individual.

(b) If the property claimed as exempt is jointly owned, each joint owner is entitled to a homestead exemption; however

(i) for property exempt under Subsection (2)(a)(i), the maximum exemption may not exceed \$10,000 per household; or

(ii) for property exempt under Subsection (2)(a)(ii), the maximum exemption may not exceed \$60,000 per household.

(c) A person may claim a homestead exemption in either or both of the following:

(i) one or more parcels of real property together with appurtenances and improvements; or

(ii) a mobile home in which the claimant resides.

(d) A person may not claim a homestead exemption for property that the person acquired as a result of criminal activity.

(3) A homestead is exempt from judicial lien and from levy, execution, or forced sale except for:

(a) statutory liens for property taxes and assessments on the property;

(b) security interests in the property and judicial liens for debts created for the purchase price of the property;

(c) judicial liens obtained on debts created by failure to provide support or maintenance for dependent children; and

(d) consensual liens obtained on debts created by mutual contract.

(4) (a) Except as provided in Subsection (4)(b), water rights and interests, either in the form of corporate stock or otherwise, owned by the homestead claimant are exempt from execution to the extent that those rights and interests are necessarily employed in supplying water to the homestead for domestic and irrigating purposes.

(b) Those water rights and interests are not exempt from calls or assessments and sale by the corporations issuing the stock.

(5) (a) When a homestead is conveyed by the owner of the property, the conveyance may not subject the property to any lien to which it would not be subject in the hands of the owner.

(b) The proceeds of any sale, to the amount of the exemption existing at the time of sale, is exempt from levy, execution, or other process for one year after the receipt of the proceeds by the person entitled to the exemption.

(6) The sale and disposition of one homestead does not prevent the selection or purchase of another.

(7) For purposes of any claim or action for taxes brought by the United States Internal Revenue Service, a homestead exemption claimed on real property in this state is considered to be a property right.

Amended by Chapter 192, 2013 General Session

78B-5-504. Declaration of homestead -- Filing -- Contents -- Failure to file -- Conveyance by married person -- No execution sale if bid less than exemption -- Redemption rights of judgment creditor.

An individual may select and claim a homestead by complying with the following requirements:

(1) Filing a signed and acknowledged declaration of homestead with the recorder of the county or counties in which the homestead claimant's property is located or serving a signed and acknowledged declaration of homestead upon the sheriff or other officer conducting an execution prior to the time stated in the notice of execution.

(2) The declaration of homestead shall contain:

(a) a statement that the claimant is entitled to an exemption and if the claimant is married a statement that the claimant's spouse has not filed a declaration of homestead;

(b) a description of the property subject to the homestead;

(c) an estimate of the cash value of the property; and

(d) a statement specifying the amount of the homestead claimed and stating the name, age, and address of any spouse and dependents claimed to determine the value of the homestead.

(3) If a declaration of homestead is not filed or served as provided in this section, title shall pass to the purchaser upon execution free and clear of all homestead rights.

(4) If an individual is married, no conveyance of or security interest in, or contract to convey or create a security interest in property recorded as a homestead prior to the time of the conveyance, security interest, or contract is valid, unless both the husband and wife join in the execution of the conveyance, security interest, or

contract.

(5) Property that includes a homestead may not be sold at execution if there is no bid which exceeds the amount of the declared homestead exemption.

(6) If property that includes a homestead is sold under execution, the sale is subject to redemption by the judgment debtor as provided in Rule 69C of the Utah Rules of Civil Procedure. If there is a deficiency, the property may not be subject to another execution to cover the deficiency.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-505. Property exempt from execution.

- (1) (a) An individual is entitled to exemption of the following property:
- (i) a burial plot for the individual and the individual's family;
 - (ii) health aids reasonably necessary to enable the individual or a dependent to work or sustain health;
 - (iii) benefits the individual or the individual's dependent have received or are entitled to receive from any source because of:
 - (A) disability;
 - (B) illness; or
 - (C) unemployment;
 - (iv) benefits paid or payable for medical, surgical, or hospital care to the extent they are used by an individual or the individual's dependent to pay for that care;
 - (v) veterans benefits;
 - (vi) money or property received, and rights to receive money or property for child support;
 - (vii) money or property received, and rights to receive money or property for alimony or separate maintenance, to the extent reasonably necessary for the support of the individual and the individual's dependents;
 - (viii) (A) one:
 - (I) clothes washer and dryer;
 - (II) refrigerator;
 - (III) freezer;
 - (IV) stove;
 - (V) microwave oven; and
 - (VI) sewing machine;
 - (B) all carpets in use;
 - (C) provisions sufficient for 12 months actually provided for individual or family use;
 - (D) all wearing apparel of every individual and dependent, not including jewelry or furs; and
 - (E) all beds and bedding for every individual or dependent;
 - (ix) except for works of art held by the debtor as part of a trade or business, works of art:
 - (A) depicting the debtor or the debtor and his resident family; or
 - (B) produced by the debtor or the debtor and his resident family;
 - (x) proceeds of insurance, a judgment, or a settlement, or other rights accruing

as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent to the extent that those proceeds are compensatory;

(xi) the proceeds or benefits of any life insurance contracts or policies paid or payable to the debtor or any trust of which the debtor is a beneficiary upon the death of the spouse or children of the debtor, provided that the contract or policy has been owned by the debtor for a continuous unexpired period of one year;

(xii) the proceeds or benefits of any life insurance contracts or policies paid or payable to the spouse or children of the debtor or any trust of which the spouse or children are beneficiaries upon the death of the debtor, provided that the contract or policy has been in existence for a continuous unexpired period of one year;

(xiii) proceeds and avails of any unmatured life insurance contracts owned by the debtor or any revocable grantor trust created by the debtor, excluding any payments made on the contract during the one year immediately preceding a creditor's levy or execution;

(xiv) except as provided in Subsection (1)(b), any money or other assets held for or payable to the individual as a participant or beneficiary from or an interest of the individual as a participant or beneficiary in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), 414(e), or 457, Internal Revenue Code;

(xv) the interest of or any money or other assets payable to an alternate payee under a qualified domestic relations order as those terms are defined in Section 414(p), Internal Revenue Code; and

(xvi) unpaid earnings of the household of the filing individual due as of the date of the filing of a bankruptcy petition in the amount of 1/24 of the Utah State annual median family income for the household size of the filing individual as determined by the Utah State annual Median Family Income reported by the United States Census Bureau and as adjusted based upon the Consumer Price Index for All Urban Consumers for an individual whose unpaid earnings are paid more often than once a month or, if unpaid earnings are not paid more often than once a month, then in the amount of 1/12 of the Utah State annual median family income for the household size of the individual as determined by the Utah State Annual Median Family Income reported by the United States Census Bureau and as adjusted based upon the Consumer Price Index for All Urban Consumers.

(b) The exemption granted by Subsection (1)(a)(xiv) does not apply to:

(i) an alternate payee under a qualified domestic relations order, as those terms are defined in Section 414(p), Internal Revenue Code; or

(ii) amounts contributed or benefits accrued by or on behalf of a debtor within one year before the debtor files for bankruptcy. This may not include amounts directly rolled over from other funds which are exempt from attachment under this section.

(2) The exemptions in Subsections (1)(a)(xi), (xii), and (xiii) do not apply to proceeds and avails of any matured or unmatured life insurance contract assigned or pledged as collateral for repayment of a loan or other legal obligation.

(3) Exemptions under this section do not limit items that may be claimed as exempt under Section 78B-5-506.

Amended by Chapter 192, 2013 General Session

78B-5-506. Value of exempt property -- Exemption of implements, professional books, tools, and motor vehicles.

(1) An individual is entitled to exemption of the following property up to an aggregate value of items in each subsection of \$1,000:

(a) sofas, chairs, and related furnishings reasonably necessary for one household;

(b) dining and kitchen tables and chairs reasonably necessary for one household;

(c) animals, books, and musical instruments, if reasonably held for the personal use of the individual or the individual's dependents;

(d) heirlooms or other items of particular sentimental value to the individual; and

(e) firearms and ammunition not included in other exemption categories in the amount of \$250 per individual, and not more than \$500 per household.

(2) An individual is entitled to an exemption, not exceeding \$5,000 in aggregate value, of implements, professional books, or tools of the individual's trade, including motor vehicles to which no other exemption has been applied, and that are actually used by the individual in the individual's principal business, trade, or profession.

(3) (a) As used in this Subsection (3), "motor vehicle" does not include any motor vehicle designed for or used primarily for recreational purposes, such as:

(i) an off-highway vehicle as defined in Section 41-22-2, except a motorcycle the individual regularly uses for daily transportation; or

(ii) a recreational vehicle as defined in Section 13-14-102, except a van the individual regularly uses for daily transportation.

(b) An individual is entitled to an exemption, not exceeding \$3,000 in value, of one motor vehicle.

(4) This section does not affect property exempt under Section 78B-5-505.

Amended by Chapter 192, 2013 General Session

78B-5-507. Exemption of proceeds from property sold, taken by condemnation, lost, damaged, or destroyed -- Tracing exempt property and proceeds.

(1) (a) An individual who owned property described in this Subsection (1) is entitled to an exemption of proceeds that are traceable for one year after the compensation for the property is received if:

(i) (A) the property, or a part of the property, could have been claimed exempt under Subsection 78B-5-505(1)(a)(i) or (ii); or

(B) the property is personal property subject to a value limitation under Subsection 78B-5-506(1)(a), (b), or (c); and

(ii) the property has been:

(A) sold or taken by condemnation; or

(B) lost, damaged, or destroyed; and

(C) the owner has been compensated for the property.

(b) The exemption of proceeds under this Subsection (1) does not entitle the individual to claim an aggregate exemption in excess of the value limitation otherwise allowable under Section 78B-5-503 or 78B-5-506.

(2) Money or other property exempt under Subsection 78B-5-505(1)(a)(iii), (iv), (v), (vi), (vii), (xiii), or (xiv) remains exempt after its receipt by, and while it is in the possession of, the individual or in any other form into which it is traceable.

(3) Money or other property and proceeds exempt under this chapter are traceable under this section by application of:

(a) the principle of:

(i) first-in first-out; or

(ii) last-in last-out; or

(b) any other reasonable basis for tracing selected by the individual.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-508. Allowable claims against exempt property.

(1) Notwithstanding other provisions of this part, but subject to the provisions of the Utah Uniform Consumer Credit Code:

(a) A creditor may levy against exempt property of any kind, except unemployment benefits, to enforce a claim for:

(i) alimony, support, or maintenance;

(ii) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or

(iii) state or local taxes.

(b) The only deductions that can be withheld from unemployment benefits are those listed in Section 35A-4-103.

(c) A creditor may levy against exempt property to enforce a claim for:

(i) the purchase price of the property or a loan made for the purpose of enabling an individual to purchase the specific property used for that purpose;

(ii) labor or materials furnished to make, repair, improve, preserve, store, or transport the specific property; and

(iii) a special assessment imposed to defray costs of a public improvement benefiting the property.

(2) This section does not affect the right to enforce any statutory lien or security interest in exempt property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-509. Waiver of exemptions in favor of unsecured creditor unenforceable.

A waiver of exemptions executed in favor of an unsecured creditor before levy on an individual's property is unenforceable.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-510. Assertion of individual's rights by spouse, dependent, or other authorized person.

If an individual fails to select property entitled to be claimed as exempt or to object to a levy on the property or to assert any other right under this part, the spouse or a dependent of the individual or any other authorized person may make the claim or objection or assert the rights provided by this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-511. Injunctive relief, damages, or both allowed against creditor to prevent violation of chapter -- Costs and attorney fees.

An individual or the spouse or a dependent of the individual is entitled to injunctive relief, damages, or both, against a creditor or other person to prevent or redress a violation of this part. A court may award costs and reasonable attorney fees to a party entitled to injunctive relief or damages.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-512. Property held by joint tenants or tenants in common.

If an individual and another own property in this state as joint tenants or tenants in common, a creditor of the individual, subject to the individual's right to claim an exemption under this part, may obtain a levy on and sale of the interest of the individual in the property. A creditor who has obtained a levy, or a purchaser who has purchased the individual's interest at the sale, may have the property partitioned or the individual's interest severed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-513. Exemption provisions applicable in bankruptcy proceedings.

An individual may not exempt from the property of the estate in any bankruptcy proceeding the property specified in Subsection (d) of Section 522 of the Bankruptcy Reform Act (Public Law 95-598), unless the individual is a nonresident of this state and has been for the 180 days immediately preceding filing for bankruptcy.

Amended by Chapter 192, 2013 General Session

78B-5-601. Statutes as evidence.

(1) The recitals in a public statute are conclusive evidence of the fact recited for the purpose of carrying it into effect.

(2) The recitals in a private statute are conclusive evidence between parties who claim under its provisions.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-602. Entries in official records as evidence.

Entries in public or other official books or records, made by a public officer in

the performance of the officer's official duties or by any other person in the performance of a duty specially enjoined by the law, are prima facie evidence of the facts stated in the entry.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-603. Entries in course of official duty as evidence.

An entry made by an officer or board of officers, or under the direction and in the presence of either, in the course of official duty is prima facie evidence of the facts stated in the entry.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-604. Certificate of location or purchase of public lands of United States as evidence.

A certificate of purchase or of location of any lands in this state, issued or made in pursuance of any law of the United States, is prima facie evidence that the holder or assignee of the certificate is the owner of the land described in the certificate. This evidence may be overcome by proof that the land was in the adverse possession of the adverse party, or those under whom the party claims, or that the adverse party was holding the land for mining purposes at the time the certificate is filed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-605. Histories, scientific books, maps, and charts as evidence.

Historical works, books of science or art, and published maps or charts, when made or published by persons having no interest in a proceeding, are prima facie evidence of facts of general notoriety and interest.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-606. Certificate of acknowledgment as evidence of execution.

Private writings, except last wills and testaments, may be acknowledged or proved, and certified in the manner provided for the acknowledgment or proof of conveyances of real property. The certificate of acknowledgment or proof is prima facie evidence of the execution of the writing in the same manner as a conveyance of real property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-607. When entries and writings of a decedent are prima facie evidence.

The entries and other writings of a decedent made at or near the time of the transaction, and when the decedent was in a position to know the facts stated in the entry, may be read as prima facie evidence of the facts written about, in the following

cases:

- (1) the entry was made against the interest of the person making it;
- (2) it was made in a professional capacity and in the ordinary course of professional conduct; or
- (3) it was made in the performance of a duty specially enjoined by law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-608. Writings -- How proved.

A writing may be proved either:

- (1) by any one who saw the writing executed;
- (2) by evidence of the genuineness of the handwriting of the maker; or
- (3) by a subscribing witness.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-609. Proof of execution when subscribing witness denies or forgets.

If the subscribing witness denies or does not recollect the execution of the writing, its execution may still be proved by other evidence.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-610. When unnecessary.

If the evidence shows that the party against whom the writing is offered has at any time admitted its execution, no other evidence of the execution need be given if the instrument is one produced from the custody of the adverse party and has been acted upon by the party as genuine.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-611. Proof of wills.

A last will and testament, except a nuncupative will, is invalid, unless it is in writing and executed in accordance with Title 75, Chapter 2, Part 5, Wills. When a will is to be shown, the instrument itself shall be produced, or secondary evidence of its contents given.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-612. Proof of instruments affecting real estate.

An instrument conveying or affecting real property, acknowledged, or proved and certified as provided by law, may, together with the certificate of acknowledgment or proof, be read in evidence in an action or proceeding, without further proof. The record, or a certified copy of the record, of the conveyance or instrument acknowledged or proved may be read in evidence, with the same effect as the original. The party offering the certified copy shall prove by affidavit or otherwise, that

the original is not in the possession or under the control of the party.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-613. Proof of publication of document, notice, or order.

(1) (a) If a court or judge orders a document or notice published in a newspaper, evidence of the publication shall be made by affidavit of the publisher, the publisher's foreman, or principal clerk with a copy of the publication attached.

(b) The affidavit shall state the date and newspaper of publication.

(2) (a) If a court or judge orders a document or notice published electronically in accordance with Section 45-1-101, evidence of the publication shall be made by affidavit of the website publisher or the website publisher's designee with a printed copy of the publication attached.

(b) The affidavit shall state the date of publication.

Amended by Chapter 388, 2009 General Session

78B-5-614. Filing of affidavit -- Original or certified copy as evidence.

If an affidavit is made in an action or special proceeding pending in a court, it may be filed with the court or clerk of the court. If not made in an action or special proceeding pending in a court, it may be filed with the recorder of the county where the newspaper is published. The original affidavit, or a copy certified by the judge of the court or officer having it in custody, is prima facie evidence of the facts stated in the affidavit.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-615. Parol evidence of contents of writings -- When admissible.

(1) The contents of a writing shall be proved by the original writing unless:

(a) the original has been lost or destroyed, in which case proof of the loss or destruction shall be made first;

(b) the original is in the possession of the party against whom the evidence is offered and the party fails to produce it after reasonable notice;

(c) the original is a record or other document in the custody of a public officer;

(d) the original has been recorded, and the record or a certified copy of the record is made in accordance with the law governing the writing offered; or

(e) the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

(2) If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination, of any act, transaction, occurrence, or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so

reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. The reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not, an enlargement or facsimile of the reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

(3) In the cases mentioned in Subsections (1)(c) and (d), a copy of the original, or of the record, shall be produced. In those mentioned in Subsections (1)(a) and (b), either a copy or oral evidence of the contents shall be given.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-616. Business record -- Admissibility -- Weight.

(1) As used in this section, "business" includes business, profession, occupation, and calling of every kind.

(2) A writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of that act, transaction, occurrence, or event, if made in the regular course of any business, and if it was the regular course of the business to make the memorandum or record at the time of the act, transaction, occurrence, or event or within a reasonable time after.

(3) All circumstances, other than those set forth in Subsection (2), of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but those circumstances do not affect its admissibility.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-617. Writings bearing obvious alterations -- Explanation required.

(1) The party producing as genuine a writing which has been altered, or appears to have been altered after its execution in a part material to the question in dispute must account for the appearance of alteration.

(2) The party may show that the alteration:

- (a) was made by another without the party's concurrence;
- (b) was made with the consent of the parties affected by it;
- (c) was otherwise properly or innocently made; or
- (d) does not change the meaning or language of the instrument.

(3) An altered writing that a party cannot adequately explain under Subsection (2) is not admissible.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-618. Patient access to medical records -- Third party access to medical records.

(1) Pursuant to 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, a patient or a patient's personal representative may inspect or receive a copy of the patient's records from a health care provider as defined in Section 78B-3-403, when that health care provider is governed by the provisions of 45 C.F.R., Parts 160 and 164.

(2) When a health care provider as defined in Section 78B-3-403 is not governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, a patient or a patient's personal representative may inspect or receive a copy of the patient's records unless access to the records is restricted by law or judicial order.

(3) A health care provider who provides a copy of a patient's records to the patient or the patient's personal representative:

(a) shall provide the copy within the deadlines required by the Health Insurance Portability and Accountability Act of 1996, Administrative Simplification rule, 45 C.F.R. Sec. 164.524(b); and

(b) may charge a reasonable cost-based fee provided that the fee includes only the cost of:

(i) copying, including the cost of supplies for and labor of copying; and

(ii) postage, when the patient or patient representative has requested the copy be mailed.

(4) Except for records provided by a health care provider under Section 26-1-37, a health care provider who provides a copy of a patient's records to a third party authorized to receive records:

(a) shall provide the copy within 30 days after receipt of notice; and

(b) may charge a reasonable fee to cover the health care provider's cost, but may not exceed the following rates:

(i) \$20 for locating a patient's records, per request;

(ii) copying charges may not exceed 50 cents per page for the first 40 pages and 30 cents per page for each additional page;

(iii) the cost of postage when the third party has requested the copy be mailed; and

(iv) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

(5) Except for records provided under Section 26-1-37, a person authorized to provide medical records, other than a health care provider under Subsections (3) and (4), who provides a copy of a patient's records to a third party authorized to receive records:

(a) shall provide the copy within 30 days after the request; and

(b) may charge a reasonable fee to cover the health care provider's cost, but may not exceed the following rates:

(i) \$20 for locating a patient's records, per request;

(ii) copying charges may not exceed 50 cents per page for the first 40 pages and 30 cents per page for each additional page;

(iii) the cost of postage when the third party has requested the copy be mailed; and

(iv) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

Amended by Chapter 33, 2011 General Session
Amended by Chapter 65, 2011 General Session

78B-5-619. Access to medical records of deceased patient.

For purposes of Section 78B-5-618, and 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, a health care provider with medical records of a deceased person may recognize the deceased person's surviving spouse or an adult child as a personal representative.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-620. Calibration certificates for breathalizers.

(1) As used in this section:

(a) "Breathalyzer" means any device used by a law enforcement agency which utilizes a person's breath to estimate blood alcohol content.

(b) "Calibration" means the manual setting of specific levels on a breathalyzer by a person trained to reset the machine to insure as accurate results as possible.

(c) "Certificate of calibration" means the document issued by the person who calibrates a breathalyzer, attesting to the accuracy of the machine.

(d) "Department" means the Department of Public Safety created in Section 53-1-103.

(e) "Digitize" means to convert content from a tangible, analog form into a digital electronic representation of that content.

(2) The department may digitize and post the digital format of certificates of calibration on its website in a secure location not available to the public.

(3) The secure location shall be available to courts and local prosecutors' offices for use in actions in which it is alleged a party was intoxicated and a law enforcement officer required the party to submit to a breathalyzer test.

(4) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) to provide a method for insuring the accuracy of the certificates on the website; and

(b) providing for an attestation to the authenticity of the certificate upon download by a prosecutor or court.

Enacted by Chapter 209, 2008 General Session

78B-5-701. Taking of affidavits in this state.

An affidavit to be used before any court, judge, or officer of this state may be taken before any judge, the clerk of any court, any justice court judge, or any notary public in this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-702. Taking of affidavits in another state.

An affidavit taken in another state or territory of the United States, to be used in

this state, may be taken before a commissioner appointed by the governor of this state to take affidavits and depositions in another state or territory, or before any notary public in another state or territory, or before any judge or clerk of a court of record having a seal.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-703. Taking of affidavits in foreign country.

An affidavit taken in a foreign country, to be used in this state, may be taken before an ambassador, minister, consul, vice consul or consular agent of the United States, or before any judge of a court of record having a seal, in the foreign country.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-704. Certification of affidavits taken before foreign court or judge.

When an affidavit is taken before a judge or court in another state or territory, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that the judge is a member of the court, shall be certified by the clerk of the court under the court's seal.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-705. Unsworn declaration in lieu of affidavit.

(1) If the Utah Rules of Criminal Procedure, Civil Procedure, or Evidence require or permit a written declaration upon oath, an individual may, with like force and effect, provide an unsworn written declaration, subscribed and dated under penalty of this section, in substantially the following form:

"I declare (or certify, verify, or state) under criminal penalty of the State of Utah that the foregoing is true and correct.

Executed on (date).

(Signature)".

(2) A person who knowingly makes a false written statement as provided under Subsection (1) is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 119, 2008 General Session

78B-5-801. Public and private statutes defined.

Statutes are public and private. A private statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-802. Tender -- Offer in writing sufficient -- Objection -- Must be specific or waived.

(1) An offer in writing to pay a particular sum of money or to deliver a written

instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.

(2) The person to whom a tender is made shall, at the time, specify any objection to the money, instrument, or property, or it is considered waived.

(3) If the objection is to the amount of money, the terms of the instrument or the amount or kind of property, the person shall specify the amounts, terms, or kind which is required, or be precluded from objection afterwards.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-803. Receipt may be demanded as condition to payment or deposit.

A person who pays money, or delivers an instrument or property, is entitled to a receipt from the person to whom the payment or delivery is made, and may demand a proper signature to the receipt as a condition of the payment or delivery.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-804. Money deposited in court.

(1) (a) Any person depositing money in court, to be held in trust, shall pay it to the court clerk.

(b) The clerk shall deposit the money in a court trust fund or with the county treasurer or city recorder to be held subject to the order of the court.

(2) The Judicial Council shall adopt rules governing the maintenance of court trust funds and the disposition of interest earnings on those trust funds.

(3) (a) Any interest earned on trust funds in the courts of record that is not required to accrue to the litigants by Judicial Council rule or court order shall be deposited in a restricted account. Any interest earned on trust funds in the courts not of record that is not required to accrue to the litigants by Judicial Council rule or court order shall be deposited in the general fund of the county or municipality.

(b) The Legislature shall appropriate funds from the restricted account of the courts of record to the Judicial Council to:

(i) offset costs to the courts for collection and maintenance of court trust funds; and

(ii) provide accounting and auditing of all court revenue and trust accounts.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-805. State, state officers, and political subdivisions not required to give bond -- Exception for appeal.

(1) Except as provided in Subsection (3), the state, any state officer acting in an official capacity on behalf of the state, or any county, city, or public corporation may not be required to post a bond, written undertaking, or security in order to pursue a civil action.

(2) Upon compliance with the other provisions of the law, the state, any state officer acting in an official capacity, or any county, city, or other public corporation,

has the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by law.

(3) A municipality is not exempt from the requirement of posting a bond, obligation, or other security when appealing a judgment for any amount in excess of \$5,000,000. To stay the enforcement of any judgment over \$5,000,000, a municipality shall be required to post security with the appellate court in the amount by which the judgment exceeds the sum of \$5,000,000 and for any interest that may accrue during the appeal.

Repealed and Re-enacted by Chapter 33, 2013 General Session

78B-5-806. Payment of costs by state.

When a state is a party and costs are awarded against it, the costs shall be paid out of the state treasury. The auditor shall draw a warrant on the General Fund for payment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-807. Payment of costs by county.

When a county is a party and costs are awarded against it, the costs shall be paid out of the county treasury.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-808. Salaries of public officers subject to garnishment.

The state and any subdivision, agency, or institution of the state which has in its possession or under its control any credits or other personal property of, or owing any debt to, the defendant in any action, whether as salary or wages, as a public official or employee may be subject to attachment, garnishment, and execution in accordance with any rights, remedies, and procedures applicable to attachment, garnishment, and execution, respectively, except as provided in Section 78B-5-809.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-809. Service of process.

Process for a garnishment under Section 78B-5-808 shall be served only upon the auditor of the legal subdivision garnished. If there is no auditor, then process shall be served on the clerk of the subdivision, agency, or institution. The answer of the auditor or clerk shall be final and conclusive.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-810. Sureties on stay bonds entitled to subrogation.

If a surety on an appeal executed to stay proceedings upon a money judgment pays the judgment, either with or without action, after its affirmance by the appellate court, the surety is subrogated to the rights of the judgment creditor, and entitled to

control, enforce, and satisfy the judgment in all respects as if the surety had recovered the same.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-811. Provisions as to depositions made applicable to nonjudicial proceedings.

The provisions of law relating to the taking of depositions in actions pending before the courts of this state are applicable to commissions, boards and officers authorized to subpoena witnesses and take testimony.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-812. Release or settlement of personal injury claim -- When voidable.

(1) Any release of liability or settlement agreement entered into within a period of 15 days from the date of an occurrence causing physical injury to any person, or entered into prior to the initial discharge of the person from any hospital or sanitarium in which the injured person is confined as a result of the injuries sustained in the occurrence, is voidable by the injured person, as provided in Sections 78B-5-812 through 78B-5-816.

(2) Notice of cancellation of the release or settlement agreement, together with any payment or other consideration received in connection with the release or agreement shall be mailed or delivered to the party to whom the release or settlement agreement was given, by the later of the following dates:

(a) within 15 days from the date of the occurrence causing the injuries which are subject of the settlement agreement or liability release; or

(b) within 15 days after the date of the injured person's discharge from the hospital or sanitarium in which the person has been confined continuously since the date of the occurrence causing the injury.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-813. Statement of injured person -- When inadmissible as evidence.

Except as otherwise provided in Sections 78B-5-812 through 78B-5-816, any statement, either written or oral, obtained from an injured person within 15 days of an occurrence or while the person is confined in a hospital or sanitarium as a result of injuries sustained in the occurrence, and which statement is obtained by a person whose interest is adverse or may become adverse to the injured person, except a peace officer, is not admissible as evidence in any civil proceeding brought by or against the injured person for damages sustained as a result of the occurrence, unless:

(1) a written verbatim copy of the statement has been left with the injured party at the time the statement was taken; and

(2) the statement has not been disavowed in writing within 15 days of the date

of the statement or within 15 days after the date of the injured person's initial discharge from the hospital or sanitarium in which the person has been confined, whichever date is later.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-814. Release, settlement, or statement by injured person -- When rescission or disavowal provisions inapplicable.

Sections 78B-5-812 through 78B-5-816 do not apply if at least five days prior to signing the settlement agreement, liability release, or statement, the injured person signed a statement in writing indicating willingness and agreement to the settlement agreement, liability release, or statement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-815. Release, settlement, or statement by injured person -- Notice of rescission or disavowal.

Notice of cancellation or notice disavowing a statement, if given by mail, is given when it is deposited in a mailbox, properly addressed with postage prepaid. Notice of cancellation given by the injured person need not take a particular form. It is sufficient if it indicates by any form of written expression the intention of the injured person not to be bound by the settlement agreement, liability release, or disavowed statement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-816. Right of rescission or disavowal of release, settlement, or statement by injured person in addition to other provisions.

The rights provided by Sections 78B-5-812 through 78B-5-816 are intended to be in addition to, and not in lieu of, any rights of rescission, rules of evidence, or provisions otherwise existing in the law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-817. Definitions.

As used in Sections 78B-5-817 through 78B-5-823:

(1) "Defendant" means a person, other than a person immune from suit as defined in Subsection (3), who is claimed to be liable because of fault to any person seeking recovery.

(2) "Fault" means any actionable breach of legal duty, act, or omission proximately causing or contributing to injury or damages sustained by a person seeking recovery, including negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

(3) "Person immune from suit" means:

(a) an employer immune from suit under Title 34A, Chapter 2, Workers'

Compensation Act, or Chapter 3, Utah Occupational Disease Act; and

(b) a governmental entity or governmental employee immune from suit pursuant to Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(4) "Person seeking recovery" means any person seeking damages or reimbursement on its own behalf, or on behalf of another for whom it is authorized to act as legal representative.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-818. Comparative negligence.

(1) The fault of a person seeking recovery may not alone bar recovery by that person.

(2) A person seeking recovery may recover from any defendant or group of defendants whose fault, combined with the fault of persons immune from suit and nonparties to whom fault is allocated, exceeds the fault of the person seeking recovery prior to any reallocation of fault made under Subsection 78B-5-819(2).

(3) No defendant is liable to any person seeking recovery for any amount in excess of the proportion of fault attributed to that defendant under Section 78B-5-819.

(4) (a) The fact finder may, and when requested by a party shall, allocate the percentage or proportion of fault attributable to each person seeking recovery, to each defendant, to any person immune from suit, and to any other person identified under Subsection 78B-5-821(4) for whom there is a factual and legal basis to allocate fault. In the case of a motor vehicle accident involving an unidentified motor vehicle, the existence of the vehicle shall be proven by clear and convincing evidence which may consist solely of one person's testimony.

(b) Any fault allocated to a person immune from suit is considered only to accurately determine the fault of the person seeking recovery and a defendant and may not subject the person immune from suit to any liability, based on the allocation of fault, in this or any other action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-819. Separate special verdicts on total damages and proportion of fault.

(1) The trial court may, and when requested by any party shall, direct the jury, if any, to find separate special verdicts determining the total amount of damages sustained and the percentage or proportion of fault attributable to each person seeking recovery, to each defendant, to any person immune from suit, and to any other person identified under Subsection 78B-5-821(4) for whom there is a factual and legal basis to allocate fault.

(2) (a) If the combined percentage or proportion of fault attributed to all persons immune from suit is less than 40%, the trial court shall reduce that percentage or proportion of fault to zero and reallocate that percentage or proportion of fault to the other parties and those identified under Subsection 78B-5-821(4) for whom there is a factual and legal basis to allocate fault in proportion to the percentage or proportion of fault initially attributed to each by the fact finder. After this

reallocation, cumulative fault shall equal 100% with the persons immune from suit being allocated no fault.

(b) If the combined percentage or proportion of fault attributed to all persons immune from suit is 40% or more, that percentage or proportion of fault attributed to persons immune from suit may not be reduced under Subsection (2)(a).

(c) (i) The jury may not be advised of the effect of any reallocation under Subsection (2).

(ii) The jury may be advised that fault attributed to persons immune from suit may reduce the award of the person seeking recovery.

(3) A person immune from suit may not be held liable, based on the allocation of fault, in this or any other action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-820. Amount of liability limited to proportion of fault -- No contribution.

(1) Subject to Section 78B-5-818, the maximum amount for which a defendant may be liable to any person seeking recovery is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that defendant.

(2) A defendant is not entitled to contribution from any other person.

(3) A defendant or person seeking recovery may not bring a civil action against any person immune from suit to recover damages resulting from the allocation of fault under Section 78B-5-818.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-821. Joinder of defendants.

(1) A person seeking recovery, or any defendant who is a party to the litigation, may join as a defendant, in accordance with the Utah Rules of Civil Procedure, any person other than a person immune from suit alleged to have caused or contributed to the injury or damage for which recovery is sought, for the purpose of having determined their respective proportions of fault.

(2) A person immune from suit may not be named as a defendant, but fault may be allocated to a person immune from suit solely for the purpose of accurately determining the fault of the person seeking recovery and all defendants. A person immune from suit is not subject to any liability, based on the allocation of fault, in this or any other action.

(3) (a) A person immune from suit may intervene as a party under Rule 24, Utah Rules of Civil Procedure, regardless of whether or not money damages are sought.

(b) A person immune from suit who intervenes in an action may not be held liable for any fault allocated to that person under Section 78B-5-818.

(4) Fault may not be allocated to a non-party unless a party timely files a description of the factual and legal basis on which fault can be allocated and information identifying the non-party, to the extent known or reasonably available to

the party, including name, address, telephone number and employer. The party shall file the description and identifying information in accordance with Rule 9, Utah Rules of Civil Procedure or as ordered by the court but in no event later than 90 days before trial as provided in Rule 9, Utah Rules of Civil Procedure.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-822. Release to one defendant does not discharge other defendants.

A release given by a person seeking recovery to one or more defendants does not discharge any other defendant unless the release so provides.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-823. Effect on immunity, exclusive remedy, indemnity, and contribution.

Nothing in Sections 78B-5-817 through 78B-5-822 affects or impairs any common law or statutory immunity from liability, including, but not limited to, governmental immunity as provided in Title 63G, Chapter 7, Governmental Immunity Act of Utah, and the exclusive remedy provisions of Title 34A, Chapter 2, Workers' Compensation Act. Nothing in Sections 78B-5-817 through 78B-5-822 affects or impairs any right to indemnity or contribution arising from statute, contract, or agreement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-824. Personal injury judgments -- Interest authorized.

(1) In all actions brought to recover damages for personal injuries sustained by any person, caused by the negligence or willful intent of another person, corporation, association, or partnership, and whether the injury was fatal or otherwise, the plaintiff, including a counterclaim plaintiff or a crossclaim plaintiff, in the complaint may claim interest on special damages actually incurred.

(2) A plaintiff, including a counterclaim plaintiff or a crossclaim plaintiff, seeking to recover damages for personal injury or wrongful death may claim prejudgment interest if for cases classified as tier 1, pursuant to the Utah Rules of Civil Procedure, the plaintiff tenders:

(a) a written settlement demand, including settlement demands under Utah Rule of Civil Procedure 68; and

(b) the amount of the demand does not exceed 1-1/3 of the amount of the judgment eventually awarded at trial.

(3) For purposes of this statute, the determining offer and counteroffer shall be the last written offer or counteroffer timely tendered by a party, provided that the offer or counteroffer is tendered at least 60 days before trial.

(4) Cases classified as tier 2 or tier 3 by the Utah Rules of Civil Procedure or submitted to binding arbitration in accordance with Sections 18-1-4 and 31A-22-321 are not subject to the requirements outlined in Subsection (2).

(5) (a) Any prejudgment interest shall be computed as simple interest. For first special damages incurred during the year of the occurrence of the act giving rise to the cause of action, any prejudgment interest shall be computed as simple interest accruing from the date on which the first date special damages were actually incurred.

(b) For special damages incurred in successive years, prejudgment interest shall be calculated from January 1 of each year special damages were incurred. The court shall calculate prejudgment interest using a per annum rate, which is two percentage points above the prime rate, as published by the Board of Governors of the Federal Reserve System on the first business day in January of the calendar year in which the judgment is entered. The prejudgment interest rate applied to all cases may not be lower than 5% or higher than 10%.

(6) As used in this section, "special damages actually incurred" does not include damages for future medical expenses, loss of future wages, or loss of future earning capacity.

(7) This section applies to any cause of action arising on or after July 1, 2014.

Amended by Chapter 257, 2014 General Session

78B-5-825. Attorney fees -- Award where action or defense in bad faith -- Exceptions.

(1) In civil actions, the court shall award reasonable attorney fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith, except under Subsection (2).

(2) The court, in its discretion, may award no fees or limited fees against a party under Subsection (1), but only if the court:

(a) finds the party has filed an affidavit of impecuniosity in the action before the court; or

(b) the court enters in the record the reason for not awarding fees under the provisions of Subsection (1).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-825.5. Attorney fees -- Private attorney general doctrine disavowed.

A court may not award attorney fees under the private attorney general doctrine in any action filed after May 12, 2009.

Enacted by Chapter 373, 2009 General Session

78B-5-826. Attorney fees -- Reciprocal rights to recover attorney fees.

A court may award costs and attorney fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney fees.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-827. Attorney fees awarded to state funded agency in action against state or subdivision -- Forfeit of appropriated money.

An agency or organization receiving state funds which, as a result of its suing the state, or political subdivision of the state, receives attorney fees and costs as all or part of a settlement or award, shall forfeit to the General Fund, from its appropriated money, an amount equal to the attorney fees received.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-828. Bond required in an environmental action.

(1) As used in this section:

(a) "Administrative stay" means a stay or other temporary remedy issued by an agency under Section 63G-4-405.

(b) "Environmental action" means a cause of action that:

(i) is filed on or after May 10, 2011; and

(ii) seeks judicial review of a final agency action to issue a permit by:

(A) the Department of Natural Resources;

(B) the Department of Transportation; or

(C) the School and Institutional Trust Lands Administration.

(c) "Ultimately prevail on the merits" means, in the final judgment, the court rules in the plaintiff's favor on at least one cause of action.

(2) A plaintiff who obtains a preliminary injunction or administrative stay in an environmental action, but does not ultimately prevail on the merits of the environmental action, is liable for damages sustained by a defendant who:

(a) opposed the preliminary injunction or administrative stay; and

(b) was harmed by the preliminary injunction.

(3) A court may not issue a preliminary injunction and an agency may not grant an administrative stay in an environmental action until the plaintiff posts with the court or the agency a surety bond or cash equivalent:

(a) in an amount the court or agency considers sufficient to compensate each defendant opposing the preliminary injunction or administrative stay for damages that each defendant may sustain as a result of the preliminary injunction or administrative stay;

(b) written by a surety licensed to do business in the state; and

(c) payable to each defendant opposing the preliminary injunction or administrative stay in the event the plaintiff does not prevail on the merits of the environmental action.

(4) If there is more than one plaintiff, the court or agency shall establish the amount of the bond required by Subsection (3) for each plaintiff in a fair and equitable manner.

(5) (a) If the plaintiff does not ultimately prevail on the merits of the environmental action, the court shall execute the bond and award damages to each defendant who:

(i) opposed the preliminary injunction or administrative stay; and

(ii) was harmed as a result of its issuance.

(b) If the amount of money secured by the surety bond or cash equivalent:

(i) exceeds the damages awarded, the court or agency shall return the excess to the plaintiff; and

(ii) is less than the damages awarded, the court or agency shall order the plaintiff to pay the remaining damages.

(6) Notwithstanding any other provision of law, a court's or agency's refusal to require the posting of a surety bond or cash equivalent as required by this section is subject to immediate appeal.

Enacted by Chapter 116, 2011 General Session